IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8363 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAQBULHUSSAIN HABIBBHAI ANSARI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Ms.Harsha Devani, learned A.G.P. for respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 20.5.2000 passed by the Police Commissioner, Ahmedabad City against the petitioner detaining him under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. The petitioner is detained at Bhavnagar District Jail,

Bhavnagar since 20.5.2000.

No reply to the petition has been filed.

The grounds enclosed with the detention order show that a criminal case under Bombay Prohibition Act was registered against the petitioner on 17.5.2000, which is the solitary criminal case registered against the petitioner. On the basis of the criminal case, as aforesaid, and the petitioner's anti social activities, to which reference has been made in the grounds of detention, the petitioner has been found to be a bootlegger. The detaining authority has also mentioned that the petitioner's bootlegging activities have become a threat to the public health. On the basis of the solitary case under the Prohibition Act and the bald mention that his activities are injurious to the public health and in absence of cogent and credible material, it cannot be said even with reference to Kanuji S.Zala's case, reported in 1999 (2) GLH 415, that petitioner's activities have become a threat to the public order. Petitioner's activities, as mentioned in the grounds of detention, may at the most constitute a case of breach of law and order and not a case of breach of public order.

Besides this the detaining authority has referred to the incidents dated 26.4.2000 and 4.5.2000 about which two witnesses have deposed against the petitioner's anti social activities. There is no dispute that the statements with regard to these two unregistered cases of incidents dated 26.4.2000 and 4.5.2000 were recorded on 18.5.2000, the same were verified on 19.5.2000 and the detention order was passed on 20.5.2000. The learned counsel for the petitioner has produced a copy of unreported decision of this court dated 6.10.2000 in Special Civil Application No.8546/2000 in which case it was held, on the basis of the earlier decision of this court in the case of Kalidas Chandubhai Kahar v.State of Gujarat, reported in 1993(2) GLR 1659, that it was a case of wrong exercise of power under Sec.9(2) of the Act. In the facts of this case also, it is found that it was a case of wrong exercise of power under Sec.9(2) of the Act.

For the reasons, as aforesaid, the impugned detention order dated 20.5.2000 passed by the Police Commissioner, Ahmedabad City cannot be sustained in the eye of law and the same is hereby quashed and set aside. The respondents are directed to release the petitioner Maqbulhussain Habibbhai Ansari forthwith from the

Bhavnagar District Jail, Bhavnagar where he is detained since 20.5.2000, in case he is not required to be detained in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)